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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/697,938

Applicant(s)

AVNI ET AL.

Examiner

ALI BAYAT

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed on 6/11/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 33 and 49-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 33, and 49-52 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments see remarks, filed on 6/11/08, with respect to the rejection of claims 1-19, 33 under 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Zank et al. (US 6,307,955).

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 17-19 and 52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 17 **defines** (a computer system stored on a computer readable medium)

embodying functional descriptive material.

The examiner suggests amending the claim to " A software stored on a computer readable medium for validating a user's identity comprising software configured to perform the steps of:" to make the claim statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-12, 15-19, 33 and 49-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Zank et al. (US 6,307,955).

Zank discloses for providing data (Fig.1 element 25 col.5 lines 20-30) for the display of a background image (Fig.1 element 24 col.5 lines 20-30), providing data for positioning at least one object on said background image (Fig.1 element 26 col.5 lines 20-30), receiving a sampled pointing device (PD)

signature including a set of position vectors(Fig.1 element 25 col.5 lines 20-30), said PD signature generated by sampling a plurality of events corresponding to positions of a cursor (col.6 lines 1-5) while operating said pointing device to provide data relative to said background image(Fig.1 element 25 col.5 lines 20-30),

Comparing said sampled PD signature to a stored PD signature representing the identity of the user (Fig.4 see 25A and 25B, col.8 lines 22-32), and

Validating said identity of said user in response to said comparing step (col.8 lines 22-32).

Regarding claims 2 and 18 Zank provides for moving said PD manipulates said cursor on said background image (Fig.1 element 26).

Regarding claims 3 and 19 Zank provides operating said PD includes moving a mouse (Fig.1 element 18).

Regarding claim 4 Zank provides for PD signature includes data generated by clicking of said pointing device (Fig.1 element 18).

Regarding claim 6 Zank provides sampling of a plurality of events includes sampling a time component (col.5 lines 59-62, see sampling intervals).

Regarding claim 7 Zank provides for the step of comparing includes applying a set of nodes to analyze said sample signature and determining if said sample signature satisfies a threshold matching criteria (Fig.3 element 66 col.8 lines 1-5).

Regarding claim 8 Zank provides for the steps of:" receiving a plurality of signature exemplars (col.2 lines 23-25, see receiving a multiplicity of the coordinates) ; and creating a set of nodes associated with said exemplars(col.2 lines 25-28, see storing respective sets of the coordinates in sequential order as an electronic signature while preserving a time relation between coordinates).

Regarding claim 9 Zank provides for displaying said background image includes displaying a graphic (Fig.1 element 24).

Regarding claim 10 Zank provides for operating said pointing device includes positioning said cursor relative to said objects (Fig.4 element 72).

Regarding claim 15 Zank provides for the PD signature is generated by processing said set of position vectors including processing a series of said events using a plurality of nodes (col.5 line 65-col.6 line 8).

Regarding claim 16 Zank provides for receiving a verification request from a provider (col.10 lines 28-40); and
Issuing in response to said step of validating, an authorization message to said provider (col.10 lines 28-40).

Regarding claims 17 and 52 see the rejection of claim 1. They recite similar limitations as claim 1. Except for a computer readable medium (col.6 lines 20-25). Hence they are similarly analyzed and rejected.

Regarding claim 33 Zank provides for a user computer system having a pointing device(Fig.1 element 18 col.5 lines 18-30) and a display screen (Fig.1 element 16), the user computer system operational to (i) display a virtual pad (

Fig.1 element 24) on said display screen, (ii) respond to a positioning of said pointing device to position a cursor on said virtual pad (Fig.1 element 18), and (iii) provide a collection of vectors describing an operation of said pointing device with respect to said cursor (Fig.1 element 25); said verification server comprising: an interface in communication with said user computer system for receiving said collection of vectors (Fig.1 element 22 see equip. interface),

a signature recognition engine (Fig.4) configured to (i) process said vectors (Fig.4 elements 25A and 25B), (ii) compare said processed vectors to exemplar signature data (Fig.4 see comparison of 25A and 25B col.8 lines 22-32) and, in response, (iii) provide signature recognition data (col.8 lines 22-32).

Regarding claim 49 Zank provides for the display of a background image includes downloading a virtual pad consisting of said background image (Fig.1 element 24) and said object (Fig.1 element 25).

Regarding claim 50 Zank provides repositioning objects (col.6 lines 1-5) on said background image (Fig.1 element 24) and said object to create said PD signature (Fig.1 element 25).

Regarding claim 51 Zank provides for displaying said background image on a computer display screen (Fig.1 element 16).

Regarding claim 12 Zank provides for step of sampling a plurality of events includes sampling horizontal and vertical positions of said cursor (col.2 lines 15-20) and a time parameter associated with respective ones of said events

(col.2 lines 15-20, see clock circuit), also see col.5 lines 30-25, see x-,y-, and z-z-axis data to the computer 12).

As to claims 5,11 and 13-14 Examiner takes official notice, operating pointing device includes positioning a drag-able icon and sampling a drag and drop or a click mode is well known in the art (i.e. , Window 2000 or Window XP of Microsoft operating system), it would have been obvious to a person of ordinary skill in the art at time the invention was made to incorporate the teaching of Microsoft operating system with the system and method of Zank for accessing an application or program in a very short time, by clicking the related icon after dragging and draping the icon on the desktop (background image).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALI BAYAT whose telephone number is (571)272-7444. The examiner can normally be reached on M-F 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella can be reached on 571-272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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